

1 KELLY A. JOHNSON
Acting Assistant Attorney General
2 Environment and Natural Resources Division
United States Department of Justice
3 950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

4 DAVID B. GLAZER
Environmental Enforcement Section
5 Environment and Natural Resources Division
United States Department of Justice
6 301 Howard Street, Suite 1050
San Francisco, California 94105
7 Telephone: (415) 744-6491
Facsimile: (415) 744-6476
8 e-mail: david.glazer@usdoj.gov

9 KEVIN V. RYAN
United States Attorney
CHARLES M. O'CONNOR, State Bar No. 56320
10 Assistant United States Attorney
Northern District of California
11 450 Golden Gate Avenue
Box 36055
12 San Francisco, California 94102
Telephone: (415) 436-7180
13 Facsimile: (415) 436-7234

14 Attorneys for Plaintiff United States of America

15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN JOSE DIVISION**

19 UNITED STATES OF AMERICA,

CASE NO.

20 Plaintiff,

21 v.

COMPLAINT

22 COUNTY OF SANTA CLARA; SANTA
CLARA VALLEY WATER DISTRICT;
23 CITY OF SAN JOSE; MIDPENINSULA
REGIONAL OPEN SPACE DISTRICT;
24 MYERS INDUSTRIES, INC.;
BUCKHORN, INC.; GUADALUPE
25 RUBBISH DISPOSAL COMPANY, INC.;
SUNOCO, INC.; and NEWSON, INC., a
26 Subsidiary of E.A. Viner International Co.,
Inc.

27 Defendants.
28

1 COMPLAINT

2 Plaintiff United States of America ("United States"), by its undersigned attorneys, by
3 authority of the Attorney General of the United States, and at the request of the United States
4 Department of the Interior ("DOI"), U.S. Fish and Wildlife Service ("USFWS"), alleges as
5 follows:

6 NATURE OF ACTION

7 1. This is a civil action brought pursuant to the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, as
9 amended by the Superfund Amendments and Reauthorization Act of 1986, for recovery of
10 damages, including damage assessment costs, for injury to, destruction of, and loss of natural
11 resources resulting from releases into the environment of inorganic and organic mercury and
12 hazardous substances contained in mining waste (hereinafter collectively "Hazardous
13 Substances").

14 JURISDICTION AND VENUE

15 2. This Court has jurisdiction over the subject matter of this action pursuant to
16 28 U.S.C. §§ 1331 & 1345 and pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C.
17 §§ 9607, 9613(b). This Court has personal jurisdiction over the Defendants.

18 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) & (c) and Section
19 113(b) of CERCLA because the claims arose and the releases of hazardous substances and
20 damages occurred in this district.

21 INTRADISTRICT ASSIGNMENT

22 4. This action is properly assigned to the San Jose Division, under Local Rule 3-2(c)
23 & (e), because the transactions giving rise to this action occurred within Santa Clara County.

24 RELATED CASES

25 5. This action is related to *State of California v. BKHN, Inc. and County of Santa*
26 *Clara and County of Santa Clara v. Myers Industries, Inc., et al.*, Nos. C-92-20246 RPA,
27 C-92-20521 RPA, C-95-2249 SC, and C-95-2250 SC, consolidated actions presided over at
28

1 various times by Judge Aguilar, Judge Ware, and Judge Conti. The previous actions involved
2 cost recovery and contribution claims relating to costs incurred in clean-up of a portion of the
3 Site that is the subject of this complaint; the previous action included many of the parties to this
4 action.

5 DEFENDANTS

6 6. The Defendants are the County of Santa Clara; the Santa Clara Valley Water
7 District; the City of San Jose; the Midpeninsula Regional Open Space District; Myers Industries,
8 Inc.; Buckhorn, Inc.; Guadalupe Rubbish Disposal Company, Inc.; Sunoco, Inc.; and Newson,
9 Inc. (a subsidiary of E.A. Viner International Co., Inc.).

10 7. Each of the Defendants is a person within the meaning of Section 101(21) of
11 CERCLA, 42 U.S.C. § 9601(21).

12 8. Each of the Defendants is liable under Section 107(a) of CERCLA because each
13 of the Defendants (i) is or was an owner or operator of facilities in the Guadalupe River
14 Watershed, as defined herein, (ii) is or was a person that arranged for the disposal of Hazardous
15 Substances at or from facilities in the Guadalupe River Watershed, or (iii) is a person that is a
16 successor to or otherwise legally responsible for the acts and omissions of persons that were
17 owners or operators of facilities in the Guadalupe River Watershed or that arranged for disposal
18 of Hazardous Substances at facilities in the Guadalupe River Watershed, from which the United
19 States alleges that there have been releases of Hazardous Substances into the environment.

20 THE SITE

21 9. The Site is the Guadalupe River Watershed, which includes (i) the Guadalupe
22 River and all its tributary streams, including without limitation Alamitos Creek, Guadalupe
23 Creek, and Arroyo Calero, and the associated tributaries, reservoirs, impoundments, banks and
24 sediments of each of the foregoing; (ii) all areas from which water or sediments drain into the
25 waters described in (i); and (iii) that area of the San Francisco Bay south of the Dumbarton
26 Bridge.

27 10. There have been releases and the threat of continuing releases, within the meaning
28

1 of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the
2 environment at the Site.

3 11. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C.
4 § 9601(9).

5 12. Hazardous substances, within the meaning of Section 101(14) of CERCLA,
6 42 U.S.C. § 9601(14), have been disposed of at the Site.

7 INJURY TO NATURAL RESOURCES

8 13. Past and continuing releases of mercury and other metals from historic mining and
9 processing operations have caused injuries to natural resources within the Guadalupe River
10 Watershed, including injuries to soil, surface water, and sediment, as well as injuries to
11 biological resources using those resources, including vegetation, invertebrates, amphibians, fish
12 species, and piscivorous birds.

13 CLAIM FOR RELIEF

14 14. Paragraphs 1–13 are realleged and incorporated herein by reference.

15 15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

16 (1) the owner and operator of a . . . facility, [or]

17 (2) any person who at the time of disposal of any hazardous
18 substance owned or operated any facility at which such hazardous
substances were disposed of, [or]

19 (3) any person who by contract, agreement, or otherwise
20 arranged for disposal or treatment, or arranged with a
transporter for transport for disposal or treatment, of
21 hazardous substances owned or possessed by such person, by any
other party or entity, at any facility . . . owned or operated by
22 another party or entity and containing such hazardous substances

23 . . . shall be liable for—

24 . . .

25 (C) damages for injury to, destruction of, or loss of natural
resources, including the reasonable costs of assessing such injury,
26 destruction, or loss resulting from such release . . .

27 16. There have been and continue to be injury to, destruction of, and loss of natural
28 resources, as defined by 42 U.S.C. § 9601(16), at the Site.

17. Each Defendant is jointly and severally liable, under 42 U.S.C. § 9607(a), for all damages resulting from injury to, destruction of, or loss of natural resources for which the United States, acting through USFWS, is a trustee and for all reasonable costs of assessing such injury to, destruction of, or loss of natural resources.

PRAYER FOR RELIEF

WHEREFORE the United States respectfully request that the Court:

1. Find Defendants jointly and severally liable, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all damages that have resulted or that will result from injury to, destruction of, or loss of natural resources at the Site and for all reasonable costs incurred or to be incurred by the United States in assessing such injury to, destruction of, or loss of natural resources and to order the Defendants to pay all such costs together with pre-judgment and post-judgment interest; and

2. Grant such other and further relief as the Court deems appropriate.

Dated:

Respectfully submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General

DAVID B. GLAZER
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476
e-mail:

OF COUNSEL

CHARLES McKINLEY
Assistant Field Solicitor
U.S. Department of the Interior
1111 Jackson Street, Suite 735
Oakland, California 94607